

**AUG 23 1993**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Amendment of Section 76.51  
of the Commission's Rules to  
Include Goldsboro,  
North Carolina in the  
Raleigh-Durham, North Carolina  
Television Market**

MM Docket No. 93-212

**COMMENTS OF WITN-TV, INC.**

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List A B C D E

**I.    GROUP H HAS FAILED TO JUSTIFY REDESIGNATION OF THE  
RALEIGH-DURHAM TELEVISION MARKET TO INCLUDE  
GOLDSBORO.**

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The record fails to demonstrate that any significant private or public benefit would result from grant of the requested market redesignation. Addition of Goldsboro to the Raleigh-Durham market identification is not necessary in order to obtain local station copyright treatment for WYED in Raleigh-Durham. Moreover, there has been no public benefit identified that would result from redesignation of the market. Nor do the other factors relied upon by Group H support the need for redesignation.

**A.    REDESIGNATION OF THE RALEIGH-DURHAM TELEVISION  
MARKET TO INCLUDE GOLDSBORO IS NOT NECESSARY IN  
ORDER TO OBTAIN THE COPYRIGHT PROTECTION SOUGHT BY  
GROUP H.**

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The only competitive disadvantage identified by Group H as a result of the current exclusion of Goldsboro from the designation of the Raleigh-Durham market is the fact that the WYED signal is not now considered "local" for copyright purposes on "all cable systems in the Raleigh-Durham area." Petition for Rulemaking at 5. Rather than undertake "significantly-viewed" studies for each cable community in the market, which Group H argues would be "cost-prohibitive," Group H seeks redesignation of the market in order to afford it treatment as a local signal in the Raleigh and Durham areas. Petition for Rulemaking at 6.

But Group H is in error in suggesting that the only alternative available to it in order to obtain favorable copyright treatment in the Raleigh-Durham area, other than redesignation of the market, is through community by community surveys. Section 76.54(d) of the Commission's Rules specifies that, for stations not encompassed by the FCC's original surveys during 1970 - 1971, significantly viewed status may be obtained on a county-wide basis using data for the first three years of the station's broadcast operations. Thus, WYED need not commission community surveys but may use existing county data available from ratings services. Existing ratings data suggests that it would not be difficult for WYED to demonstrate the required viewing levels.<sup>1</sup> For example, the 1993 NSI County by County analysis indicates that WYED achieved a 2 share/17 cumulative share sign-on/sign-off in Wayne County.

Accordingly, Group H's argument that redesignation of the market is the only practical way to obtain copyright classification as a "local" station in the Raleigh and Durham areas is simply wrong. Moreover, as Group H concedes in its Petition, adding Goldsboro to the Raleigh-Durham market designation is not necessary in order to ensure cable carriage of the WYED signal by cable television systems in the Raleigh-Durham area. Under the Cable Television Consumer Protection and

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<sup>1</sup> Section 76.5(i)(2) of the Commission's Rules states that, for an independent station, significantly viewed status requires "a share of viewing hours of at least 2 percent (total week hours), and a net weekly circulation of at least 5 percent."

Competition Act of 1992, WYED is entitled to must-carry status throughout the Raleigh-Durham ADI. See Petition at 8, n.2.

**B. THE REQUESTED REDESIGNATION OF THE RALEIGH-DURHAM MARKET WOULD NOT RESULT IN ANY PUBLIC BENEFIT.**

Not only is the addition of Goldsboro to the Raleigh-Durham market designation unnecessary in order to achieve favorable copyright treatment for WYED, it would not result in any public benefit.

The sole public benefit pointed to by Group H in its Petition is that "[a] change in the Raleigh-Durham market designation to Raleigh-Durham-Goldsboro will allow cable subscribers to receive WYED without subjecting WYED to the cost-prohibitive alternative of commissioning "significantly viewed studies." Petition at 9. That statement, however, is based upon three distinct errors.

First, as noted above and conceded by Group H, redesignation of the Raleigh-Durham market is not necessary in order to afford WYED mandatory carriage rights on Raleigh and Durham cable systems. The Cable Act of 1992 confers those rights upon WYED throughout the Raleigh-Durham ADI. Moreover, as Group H concedes in its Petition, the Raleigh-Durham cable systems now carry WYED. Petition at 4.

Second, as previously noted, WYED does not need to commission community-by-community surveys in order to obtain significantly viewed status. It can utilize existing county-wide viewing data from its first three years of operation.

Third, even if the first two factors above were not true, Group H has made absolutely no showing that there is any distinct benefit provided by its programming that is not already provided by the existing stations that now serve Goldsboro. The only statement addressing this point in Group H's Petition is its conclusory assertion that "WYED provides Raleigh-Durham viewers with an alternative voice and syndicated programming not currently available on the network affiliates." Petition at 9. Group H has not identified any of the programming that it now carries and, in fact, there is no reason to believe that any syndicated programming of any significance would not already be available to residents of the Raleigh-Durham area via the other stations that now are available in that area over-the-air and on cable.

Aside from WYED, 7 stations, including three other independent stations and a Fox affiliated station, now place a predicted Grade B contour over Raleigh and Durham, North Carolina. These include: WAAP(TV) (Ind.), WKFT(TV) (Ind.), WRMY (TV) (Ind.), WLFL-TV (Fox), WRDC(TV) (NBC), WTVD(TV) (ABC), and WRAL-TV (CBS). Each of these also is carried on the cable television systems in the Raleigh-Durham area. There has been no

showing of any kind made by Group H that it would provide syndicated programming not currently available on one or more of these stations.

Nor has there been any showing by Group H that local news and informational programming that it may produce concerning Goldsboro would be of particular interest in the Raleigh-Durham area. Indeed, WITN is not aware of any local news or informational programming that is produced or broadcast by WYED.<sup>2</sup>

In sum, Group H has failed to demonstrate that grant of the requested market redesignation would result in any benefit to the viewing public.

**C. THE OTHER FACTORS RELIED UPON BY GROUP H DO NOT SUPPORT THE REQUESTED MARKET REDESIGNATION.**

The other factors identified by Group H in its Petition do not support the addition of Goldsboro to the Raleigh-Durham market designation.

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<sup>2</sup> Indeed, the available evidence suggests that WYED does not perceive of itself as a Goldsboro station. As indicated in the Group H Petition, the WYED transmitter is located a considerable distance from Goldsboro. According to the coordinates for the WYED-TV transmitter furnished in Group H's Petition (see Petition at 2 - 3, n.1), the WYED-TV transmitter is located 23 miles from Raleigh. If the distance from Raleigh to Goldsboro is 51 miles, as stated in Group H's Petition (see Petition at 2), the WYED-TV transmitter is located approximately 28 miles from Goldsboro. Moreover, although WITN currently maintains a local sales person in Goldsboro, WYED does not.

For example, Group H asserts that the Raleigh, Durham, and Goldsboro stations serve substantially the same areas: that WYED places a predicted City Grade signal contour over both Raleigh and Durham and a predicted Grade B contour over a majority of the Raleigh-Durham market while three Raleigh-Durham stations place a Grade A or better signal over Goldsboro and the fourth places a Grade B signal over Goldsboro. Petition at 3. However, in addition to WYED, the following stations, located in adjoining markets, also place a Grade A signal over Goldsboro: WITN-TV, WNCT-TV and WCTI(TV). In addition, WYDO(TV) and WECT(TV) place a Grade B signal over Goldsboro. WWAY(TV) places a Grade B signal on the outskirts of Goldsboro.

Group H also asserts that the Arbitron ratings service includes Goldsboro in the Raleigh-Durham market, that the Goldsboro cable system includes the four Raleigh-Durham stations, and that the Raleigh and Durham newspapers include WYED in the television listings for the Raleigh-Durham area. Petition at 3-4.

Group H's first point with respect to the Arbitron ratings service is simply wrong. Although Goldsboro is geographically located within the Raleigh-Durham ADI, the ADI listing does not include the name "Goldsboro." The mere fact that Goldsboro is located within the Raleigh-Durham ADI is irrelevant -- so are a number of other communities. Indeed, WITN submits that the absence of Goldsboro from the ADI market

designation weighs heavily against grant of the requested market change. Arbitron has in place its own process whereby communities may be added to the ADI designation. The fact that this has not been done suggests that Arbitron believes such a step to be inappropriate.

With respect to Group H's second and third points, WITN-TV and a number of other stations also are carried on the Goldsboro cable system and are included in the Raleigh-Durham television listings. Thus, the fact that WYED is as well is of no special significance.

**II. REDESIGNATION OF THE RALEIGH-DURHAM TELEVISION MARKET WOULD DISSERVE THE PUBLIC INTEREST.**

Redesignation of the Raleigh-Durham market would result in significant harm to the viewing public by enabling the Raleigh and Durham stations to extend the reach of their syndicated exclusivity and network nonduplication rights into substantial portions of the Greenville-Washington-New Bern, North Carolina market.

Under Sections 76.92(f) and 76.151 of the Commission's Rules, stations in a hyphenated market are entitled to nonduplication and syndicated exclusivity protection within a 35-mile zone of their community of license and any other designated community in a hyphenated market. Thus, if Goldsboro is added to the Raleigh-Durham market designation, stations in Raleigh and



Durham will be able to claim such protection within a 35-mile zone of Goldsboro. Because of Goldsboro's proximity to the Greenville-Washington-New Bern market, this will result in Raleigh and Durham stations being able to extend their nonduplication and syndex rights into the Greenville market. As a result of the extension of these rights beyond their home market, stations in the Greenville market may well have their existing service to cable subscribers disrupted within their home market as cable systems are forced to black out the duplicating portions of their signals. WITN submits that this result plainly would not be in the public interest.

#### **CONCLUSION**

There is no basis upon which to grant the requested designation of the Raleigh-Durham, North Carolina television market to include Goldsboro. This change is not necessary in order to allow WYED to attain significantly viewed status nor would it provide any benefit to the viewing public; carriage of WYED on the Raleigh-Durham cable systems already is mandated by the Cable Act. To the contrary, addition of Goldsboro to the Raleigh-Durham market designation might well disrupt existing viewing patterns by allowing Raleigh and Durham stations to extend their network nonduplication and syndicated exclusivity rights outside of the Raleigh-Durham ADI.

For the above reasons, WITN respectfully requests that the Commission not approve the requested market redesignation.

Respectfully submitted,

WITN-TV, INC.

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August 23, 1993

**CERTIFICATE OF SERVICE**

I, John E. Riley, a secretary in the law offices of  
Sidley & Austin, hereby certify that a true copy of the foregoing  
"COMMENTS OF WITN-TV, INC." has been served by first class United  
States mail, postage prepaid, on the following, this 23rd day of  
August, 1993:

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John E. Riley